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NO JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KEVIN SO,)	Case No. CV 08-03336 DDP (AGRx)
)	
Plaintiff,)	ORDER GRANTING PLAINTIFF'S MOTION
)	FOR ENTRY OF JUDGMENT AS TO
v.)	KONDAS DEFENDANTS
)	
LAND BASE, LLC; UNIVEST)	[Motion filed on October 25,
FINANCIAL SERVICES, INC.;)	2010]
BORIS LOPATIN, individually)	
and d/b/a BORIS LOPATIN)	
ASSOCIATES and CHARLES W.)	
WOODHEAD,)	
)	
Defendants.)	
_____)	

Presently before the court is Kevin So's ("Plaintiff") Motion for Entry of Judgment as to Kondas Defendants pursuant to Federal Rules of Civil Procedure 54(b) and in accordance with the court's order dated September 2, 2010, which granted summary judgment in favor of Kevin Kondas, Mira Meltzer, KM & Associates International, KB & M Projects International, and CTL Projects International (collectively "Kondas Defendants"). Plaintiff seeks entry of judgment in order to appeal the court's September 2, 2010, order. Kondas Defendants oppose Plaintiff's motion. Kondas Defendants argue that permitting an appeal of the court's award of summary

1 judgment in favor of Kondas Defendants alone would result in
2 piecemeal litigation. After reviewing the parties' moving papers
3 and hearing oral argument, the court is inclined to GRANT the
4 motion.

5 **I. BACKGROUND**

6 Plaintiff has participated in several law suits to recoup a
7 \$30 million investment he made in 2005 in an entity called the
8 Private Placement Project, which turned out to be a Ponzi scheme.
9 In one such suit, Plaintiff filed a complaint against Kondas
10 Defendants as well as other defendants. In May 2010, Kondas
11 Defendants moved for summary judgment. Kondas Defendants argued
12 that a three-year statute of limitations applied to all of
13 Plaintiff's claims against them and that Plaintiff's claims were
14 therefore time-barred. On September 2, 2010, the court agreed and
15 granted the Kondas Defendants' motion for summary judgment. The
16 court's order, however, did not result in a judgment because
17 Plaintiff had continuing claims against remaining defendants.

18 Now, Plaintiff requests a stay with respect to the remaining
19 defendants and an entry of judgment as to the Kondas Defendants in
20 order to pursue an interlocutory appeal of the court's September 2,
21 2010, grant of summary judgment. Plaintiff argues that the
22 circumstances of this case are sufficient for purposes of Rule
23 54(b) to stay the trial against the remaining defendants and that
24 no prejudice will issue with respect to the Kondas Defendants. In
25 particular, Plaintiff argues that if the court does not stay all
26 proceedings with respect to the remaining defendants and permit
27 Plaintiff to appeal the court's order, the end result would likely
28 be one trial now against the remaining defendants and another trial

1 involving substantially similar facts following remand. This
2 result, Plaintiff contends, "would be both impractical and unduly
3 prejudicial to Plaintiff." (Pl's Motion 2:16-17.) Defendants
4 argue that permitting appeal "would render the federal policy
5 against piecemeal litigation meaningless." (Def.'s Opp'n 1:27-
6 28.) **II. Legal Standard**

7 Federal Rule of Civil Procedure 54(b) provides in relevant
8 part:

9 when multiple parties are involved, the court
10 may direct the entry of a final judgment as to
11 one or more but fewer than all of the claims or
12 parties only upon an express determination that
13 there is no just reason for delay and upon an
14 express direction for the entry of judgment.

15 Fed. R. Civ. P. 54(b).

16 **II. Discussion**

17 As a general rule, an order granting a motion for summary
18 judgment is a final judgment for purposes of Rule 54(b). See,
19 e.g., SEC v. Platforms Wireless Intern. Corp., 617 F.3d 1072, 1084-
20 85 (9th Cir. 2010). However, an order that adjudicates fewer than
21 all claims of all parties is not final. Chacon v. Babcock , 640
22 F.2d 221, 222 (9th Cir. 1981). Appeal of such orders may proceed
23 only upon adjudication of the remaining claims or certification by
24 the court pursuant to Rule 54(b). Fed. R. Civ. P. 54(b); Special
25 Investments, Inc. v. Aero Air, Inc. , 360 F.3d 989, 993 (9th Cir.
26 2004). Rule 54(b) permits a district court to enter judgment on
27 "fewer than all" claims or parties where there is "no just reason
28 for delay." Fed.R.Civ.P. 54(b); Am. States Ins. Co. v. Dastar
Corp., 318 F.3d 881, 889-90 (9th Cir. 2003). A properly entered

1 Rule 54(b) judgment is a "final" appealable judgment for purposes
2 of 28 U.S.C. § 1291. Id.

3 In considering whether there is "no just reason for delay,"
4 the court is mindful of "such factors as the interrelationship of
5 the claims as to prevent piecemeal appeals." SEC, 617 F.3d at 1084
6 (quoting AmerisourceBergen Corp. v. Dialysist W., Inc., 465 F.3d
7 946, 954 (9th Cir. 2006)). The court takes "a pragmatic approach
8 with [a] focus on severability and efficient judicial
9 administration." Id. (internal quotation marks and citation
10 omitted). The court "must take into account judicial
11 administrative interests as well as the equities involved," and
12 "consider such factors as whether the claims under review were
13 separate from the others remaining to be adjudicated and whether
14 the nature of the claims already determined was such that no
15 appellate court would have to decide the same issues more than once
16 even if there were subsequent appeals." Curtiss-Wright Corp. v.
17 General Electric Co., 446 U.S. 1, 7-13 (1980). The Ninth Circuit
18 has, for example, held that the entry of default judgment as to
19 only some defendants in an action is improper in circumstances in
20 which the defendants have closely related defenses or are otherwise
21 similarly situated. See Nielson v. Chang, 253 F.3d 520, 532 (9th
22 Cir. 2001).

23 Here, the court granted summary judgment to Kondas Defendants
24 because the court determined that Plaintiff's claims with respect
25 to the Kondas Defendants were time-barred. The court's order was
26 not applicable to claims against the remaining defendants, nor was
27 the Kondas Defendants' statute of limitations defense shared with
28 the remaining defendants. Indeed, the statute of limitations

1 defense that was the basis for the summary judgment order as to the
2 Kondas Defendants is completely severable from other issues in the
3 case. Thus, there is little risk of piecemeal appeal of this
4 issue. Because the issues involved in the Kondas Defendants'
5 statute of limitations defense applied only to the Kondas
6 Defendants, there is no risk of multiple appeals arising from other
7 defendants later litigating the same legal issue against Plaintiff.
8 And, the claims disposed of by the grant of summary judgment
9 completely extinguished the liability of Kondas Defendants as to
10 Plaintiff's claim. See Continental Airlines, Inc. v. Goodyear Tire
11 & Rubber Co., 819 F.2d 1519, 1525 (9th Cir. 1987). Furthermore,
12 the facts in common between all defendants on all other issues
13 council in favor of a single trial of all defendants. Separate
14 trials against the multiple defendants who share interrelated facts
15 would be repetitive and not in the interest of judicial economy.

16 In sum, the court is satisfied that the basis upon which
17 summary judgment was granted in favor of Kondas Defendants is
18 sufficiently discrete from the remaining issues in the case that
19 entry of a separate judgment in their favor is not likely to result
20 in duplicative appellate review. Defendants have also not
21 demonstrated that allowing an immediate appeal to go forward, as
22 opposed to entering final judgment following resolution of
23 Plaintiff's claims with respect to the remaining defendants, would
24 prejudice Defendants.

25 **III. Conclusion**

26 For the foregoing reasons, the court concludes that there is
27 no just reason for delay and final judgment shall enter pursuant to
28 Rule 54(b) in favor of the Kondas Defendants. Accordingly, the

1 court STAYS the case before the court as to all defendants and
2 GRANTS Plaintiff's Motion for Entry of Judgment in favor of Kondas
3 Defendants in accordance with the court's September 2, 2010,
4 summary judgment order.

5 Defendants are awarded costs.

6
7 IT IS SO ORDERED.
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9
10 Dated: November 24, 2010


DEAN D. PREGERSON
United States District Judge